

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In Re:	:	
	:	
YOLANDA D JAMES	:	Case No. 19-12571
	:	
Debtor	:	

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YOLANDA D JAMES	:	
	:	
Plaintiff	:	
	:	
v.	:	Adv. Pro. No.
	:	
DELAWARE STATE HOUSING AUTHORITY	:	
	:	
Defendant	:	

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**COMPLAINT TO AVOID THIRD MORTGAGE LIEN HELD BY DELAWARE STATE  
HOUSING AUTHORITY**

COMES NOW, the Plaintiff, Yolanda D. James, (hereinafter "Debtor") by and through her undersigned counsel, Vivian A. Houghton, Esquire, and request that this Honorable Court hear the Complaint to Void the Third Mortgage held by Delaware State Housing Authority (hereinafter "Defendant") based on the following:

**JURISDICTION**

1. The Court has jurisdiction of this Complaint pursuant to 28 U.S.C. Section 1334(b).
2. This Complaint is a contested matter under Rule 9014 of the Federal Rule of Bankruptcy Procedure and is a core matter properly heard by this Court pursuant to 28 U.S.C. Section 157(b) (2) (K).
3. Venue of this Complaint is proper in the Court pursuant to 28 U.S.C Section 1409(a).

**BACKGROUND**

4. The Debtor filed a Chapter 13 Bankruptcy Petition on December

2, 2019.

5. Debtor is the owner of real property located at 1916 North West Street, Wilmington DE 19802 (hereinafter "Property").
6. There exist three mortgages on the Property. The first mortgage is held by James B. Nutter & Company. The second mortgage is also held by James B. Nutter & Company. The third mortgage is held by the Defendant, Delaware State Housing Authority.
7. The first mortgage held by James B. Nutter & Company at the time of the filing of the Chapter 13 Bankruptcy Petition had a balance of eighty four thousand seven hundred ninety-two dollars and sixty-one cents (\$84,792.61). Said lien is recorded in the Recorder of Deeds in and for New Castle County in Mortgage Instrument Number 20090225-0010348.
8. The second mortgage, also held by James B. Nutter & Company, at the time of the filing of the Chapter 13 Bankruptcy Petition had a balance of thirty three thousand six hundred eighty-three dollars and three cents (\$33,683.03). Said lien is recorded in the Recorder of Deeds in and for New Castle County in Mortgage Instrument Number 20140519-0020524.
9. The third mortgage held by Defendant at the time of the filing of the Chapter 13 Bankruptcy Petition had a balance of thirty thousand dollars (\$30,000.00). Said lien is recorded in the Recorder of Deeds in and for New Castle County in Mortgage Instrument Number 20180611-0027594.

**VOIDANCE OF MORTGAGE**

10. The value of the Property listed above at the time of the filing of the Chapter 13 Petition was one hundred nine

thousand dollars (\$109,000.00).

11. The third mortgage held by Delaware State Housing Authority is therefore an unsecured debt because there is no equity remaining in the Property.
12. The Confirmed Chapter 13 Plan filed with the Court stated that the third mortgage would be stripped. There was no objection to the confirmation of the Chapter 13 Plan by the Defendant.
13. According to the Third, Fifth and Ninth Circuit Bankruptcy Appellate Panel, a junior lien can be modified where the debtor's property has no value to which it can attach. Delaware State Housing Authority has an unsecured lien and the anti-Modification clause of Section 1322(b)(2) does not apply.

WHEREFORE, Debtor respectfully requests that the third mortgage held by Delaware State Housing Authority be stripped off from the Property and be crammed down to zero dollars, and the lien on the Property located at 1916 North West Street, Wilmington DE 19802 be marked void or satisfied at the Recorder of Deeds.

Date: June 8, 2020

/s/ Vivian A Houghton, Esquire  
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